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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,084

06/02/2006

T. Russell Shivas

CELL-113

9649

35893

7590

08/21/2008

GREENBERG TRAURIG, LLP

ONE INTERNATIONAL PLACE, 20th FL

ATTN: PATENT ADMINISTRATOR

BOSTON, MA 02110

EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,084	<b>Applicant(s)</b> SHIVAS, T. RUSSELL	
	<b>Examiner</b> Jason Daniel Prone	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10-24-07</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Inventorship***

1. It is unclear if the inventor's name is T. Russell Shivas or Russell T. Shivas. Basically it is unclear if the "T" is a middle or first initial. In the next response please confirm one of the two options so it can be fixed in our system if the incorrect name is present.

### ***Claim Objections***

2. Claims 4, 5, 8, and 9 are objected to because of the following informalities: Each of the listed claims disclose one of the phrases "said protrusions each extend along an axis", "said three protrusions extend along axes" or "said three protrusions each extend along an axis" need to be re-written with respect to the axis already disclosed in claim 1. Claim 1 discloses an axis that the protrusion extends along but claim 4 discloses the two protrusions extend along an axis with no mention of the previous axis. As written is would be unclear if the 1<sup>st</sup> protrusion extends along more than 1 axis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shirejian (3,144,185). See Appendix A for examiner added reference numerals.

Claims 1-14:

With regards to claims 1 and 2, Shirejian discloses the same invention including a breaking device (10) with a ring (12, 14) having an open section (22), at least one pointed protrusion extending outward along an axis from an outer circumferential surface of the ring and extends from a part of the outer circumferential surface (17), and the part is opposite the open section (Fig. 2).

With regards to claims 3-10, Shirejian discloses three protrusions (17), the protrusions extend along parallel axes (17, all of the protrusion extend along an axis parallel to B), the protrusions extend angular offset axes (A, B, C), and the protrusions have distal tips, the protrusions each extend a distance such that the distal tips are substantially positioned in one line which is perpendicular to the axis of a middle protrusion (D).

With regards to claims 11-14, Shirejian discloses the device is made of a resilient material (Column 2 line 17-20), the device is made of plastic (Column 2 line 19), the ring is oval shaped (Fig. 2), and the ring has an inner diameter sized to fit over a human finger (Fig. 4).

Claims 15-17:

With regards to claims 15-17, Shirejian discloses the same invention including a breaking device (10) with a ring (12, 14) having an inner dimension to fit over a finger (Fig. 4), three protrusions extending outward along an axis from an outer circumferential surface of the ring (17), and the protrusions have distal

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tips that are substantially positioned in one line which is perpendicular to the axis of a middle protrusion (B, D).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakes (3,993,230) in view of Pratt (Des. 350,693) with evidence reference Chument (Des. 322,030). Oakes discloses the invention including a roll of tape with an adhesive side (16), a tape breaking device (10) with a ring (24.2) having an open section (24.3), at least one pointed protrusion (20) extending outward along an axis from an outer circumferential surface of the ring (Fig. 10).

However, even though the process of placing a tape breaking assembly into packaging is old and well known, Oakes fails to disclose a unitary package with a substantially planar sheet member supporting the tape roll and the tape breaking device on one surface, an at least partially transparent cover disposed over the tape roll and tape breaker and extending from points on the surface disposed about the tape roll and breaker, the cover is molded with a first depression and a second depression, and the cover the planar sheet are mounted together by melting edges of the cover to the edges of the planar sheet.

Chumentì provides evidence that tape breakers and rolls are put into packaging and that tape breaker assembly shapes are old and well known.

Pratt teaches it is old and well known in the art of packaging to incorporate a unitary package with a substantially planar sheet member supporting more than one structure on one surface (Fig. 5), an at least partially transparent cover disposed over a first and second structures and extending from points on the surface disposed about the first and second structures (Fig. 5), the cover is molded with a first depression and a second depression (Fig. 5), and the cover and the planar sheet are mounted together by melting edges of the cover to the edges of the planar sheet (Fig. 4). It is old and well known to incorporate all structures that are meant to be used together in a single package. It is noted that Pratt is not teaching the specific shape shown but that it is old and well known to incorporate whatever shape is necessary. Therefore, it would have been obvious to one skilled in the art, at the time of the invention to have provided Oakes, with a corresponding package, as taught by Pratt because a person of ordinary skill has good reason to pursue the known options within technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosebro, Treat, Bergquist, Billau, Hansen et al., Asher, Edmiston, Tozzi, Streit et al., and Loewen et al.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Daniel Prone whose telephone number is (571)272-4513. The examiner can normally be reached on 7:30-5:00 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

19 August 2008

/Jason Daniel Prone/

Primary Examiner, Art Unit 3724





Appendix A

(a blown up/cleaned up view of the protrusions 17 as shown in Figure 1)

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